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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 15, 2000

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE980812

Ex Parte: In the matter of
establishing interim rules for
retail access pilot programs

ORDER DENYING PETITIONS
FOR RECONSIDERATION

On May 26, 2000, the State Corporation Commission ("Commission") issued its Final Order in the captioned case, setting forth the Interim Rules Governing Electric and Natural Gas Retail Access Pilot Programs ("Interim Rules"). Thereafter, the Commission received Petitions for Reconsideration (collectively, "Petitions") from Roanoke Gas Company ("RGC"), Washington Gas Energy Services ("WGES"), and American Electric Power - Virginia ("AEP-VA"). For the reasons set forth below, we will deny each of the Petitions.

Petition of RGC:

On June 12, 2000, RGC filed a Petition for Reconsideration. RGC expresses concern with language contained in the section of the Final Order discussing the allocation of partial payments received from customers during the Pilot Programs. In our Final

Order, when discussing 20 VAC 5-311-60 E, we alluded to recent legislation specifying how the tax portion of a customer's utility bills will be collected.¹ As part of that discussion, we stated, "These statutes mandate a pro rata sharing of any payment collected where the customer previously has failed to pay a utility bill." RGC seeks to have this language stricken from the Final Order because the statutes themselves use the term "apportion" instead of "pro rate." RGC states that this sentence indicates a Commission intention to pro rate partial payments between taxes and the remainder of utility bills and that, if taxes are to be prorated and the remainder of such bills are spread based upon customer designation or age of charges, taxes and commodity services could be spread on different bases.

20 VAC 5-311-60 E concerns the distribution of partial payments between the local distribution company ("LDC") and the competitive service provider ("CSP") during the Pilot Programs. Our reference to the tax statutes in the Final Order was to lend support to our position that we see no reason not to pro rate partial payments between these entities, and that we may later consider the proration method for payment allocation between LDCs and CSPs. 20 VAC 5-311-60 E does not require a pro rata

¹ 2000 VA. Acts ch. 614 (to be codified at § 58.1-2901); 2000 Va. Acts ch. 691 (to be codified at § 58.1-2905).

sharing of payments between the LDC and CSP. Further, the rule was neither designed nor intended to address the tax portion of partial payments. The payment of taxes in the instance of a partial payment or the recovery of funds after a customer's failure to pay a bill for energy services should proceed as set forth in the applicable tax statutes.

Petition of WGES:

On June 7, 2000, WGES filed a Petition for Reconsideration, expressing concern with several rules that give a switching customer ten days to rescind an enrollment and cancel a contract with a CSP. The ten-day period is calculated from the date the customer receives notification from the LDC advising the customer of the enrollment request. The customer is deemed to have received the notice three days after the date of mailing. WGES is concerned with this rule's application to commercial and industrial customers because, in the case of those customers, WGES states that the signing of a contract can take place months before enrollment. Thus, according to WGES, a commercial or industrial customer could rescind a contract months after signing it, leaving the CSP with energy it has procured but for which it now has no purchaser.

As a remedy for this situation, WGES proposes that the rules concerning a customer's right to cancel a contract apply

only to residential customers.² This solution, however, conflicts with § 56-587 C 1 of the Code of Virginia, which states, "The Commission shall establish a reasonable period within which *any retail customer* may cancel, without penalty or cost, any contract entered into with a supplier licensed pursuant to this section" (emphasis added).³ Though the remedy WGES seeks is not possible, WGES raises the suggestion that different standards for contract cancellation may be appropriate for more sophisticated energy purchasers, which may include the commercial and industrial customers to which WGES refers, than the standards applicable to residential customers. We will consider this issue with the start of full scale retail competition.

Moreover, we find that the crux of this dilemma is not necessarily whether a customer has ten days or three days to rescind a contract, but how that period is calculated. WGES asserts that, presently, the rescission period may be delayed by weeks or months because the rescission period does not begin to be calculated until the customer receives the notice of enrollment request from the LDC and that, currently, LDCs have

² See Appendix A to the Petition for Reconsideration filed by WGES on June 7, 2000, Document Control No. 000610221.

³ By legislation passed by the 2000 General Assembly, the words "a supplier" were deleted and, in their place, the words "any person" were added. This amendment becomes effective July 1, 2000. See 2000 Va. Acts ch. 991.

deadlines preventing a CSP from submitting early enrollment notifications which would enable CSPs to synchronize enrollment requests with contract execution. The Interim Rules we have adopted envision that a CSP may file an enrollment request with an LDC immediately upon obtaining authorization from the customer. 20 VAC 5-311-30 B 4 requires an LDC "normally within one business day of receipt" of the enrollment request from the CSP, to mail notification to the customer advising of the request. Receipt of this notification triggers the 10-day cancellation period. If current LDC practices prevent this process, this issue will need to be addressed as part of the LDC's compliance with the Interim Rules in accordance with 20 VAC 5-311-60 B and with orders approving individual retail access Pilot Programs.

Petition of AEP-VA:

On June 12, 2000, AEP-VA filed a Petition for Reconsideration. AEP-VA requests that 20 VAC 5-311-30 A 10 either be deleted or modified to add language at the beginning of the rule to note that this rule is applicable "except as otherwise required or made unnecessary by SEC or other federal regulations or orders." 20 VAC 5-311-30 A 10 provides that an LDC shall be compensated at the greater of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to an affiliated CSP and that an LDC shall

pay the lower of fully distributed cost or market price for all non-tariffed services, facilities, and products received from the affiliated CSP. AEP-VA expresses concern that this rule may conflict with federal law where affiliates of a registered holding company are involved.

AEP-VA takes issue with our citation to the National Association of Regulatory Utility Commissioners' ("NARUC") Attachment to Resolution Regarding Cost Allocation Guidelines for the Energy Industry, "Guidelines for Cost Allocations and Affiliate Transactions," adopted at the NARUC Summer Committee Meetings in July 1999 and with our citation to Application of GTE South, Inc.⁴ We made these references as support for the general policy set forth in 20 VAC 5-311-30 A 10 because the accounting procedures and policies therein are similar to those stated in 20 VAC 5-11-30 A 10.

AEP-VA also refers to the portion of the Final Order in which we describe AEP-VA's assertion that the accounting policy set forth in the Interim Rules might discourage affiliated CSPs from participating in Pilot Programs because affiliates of

⁴ Attachment to Resolution Regarding Cost Allocation Guidelines for the Energy Industry, "Guidelines for Cost Allocations and Affiliate Transactions," NARUC Summer Committee Meetings, Resolutions, § D (July 18-21, 1999) <http://www.naruc.org/Resolutions/summer99.htm>; Order, Application of GTE South Incorporated For revisions to its local exchange, access and intraLATA long distance rates, Case No. PUC950019, 1997 S.C.C. Ann. Rep. 216, 218, aff'd GTE South, Inc. v. AT&T Communications of Virginia, Inc., No. 991964, 2000 WL 257121 at *3 (Sup. Ct. Va. March 3, 2000).

registered holding companies must price affiliate arrangements according to federal regulations. In response to this assertion, our Final Order notes that it is not unusual for affiliates of registered holding companies to price transactions on bases similar to that required in Virginia.

For example, AEP-VA's parent company, American Electric Power Company, Inc., and other registered holding companies, have agreed, as a condition for merger approval, for Federal Energy Regulatory Commission ("FERC") ratemaking purposes, to commit to follow FERC's policy regarding the treatment of costs and revenues resulting from affiliate transactions.⁵ Such commitments from registered holding companies also are made with respect to this Commission's pricing standards.⁶ The FERC pricing policy is not dissimilar to the policy set forth in

⁵ Order Accepting for Filing and Suspending Proposed Tariffs and Agreements, Consolidating Dockets, and Establishing Hearing Procedures, American Electric Power Company, et al., Docket Nos. EC98-40-000, ER98-2770-000 and ER98-2786-000, 85 FERC 61,201 (1998); See also Order Conditionally Approving Disposition of Jurisdictional Facilities, Dominion Resources Inc., et al., Docket No. EC99-81-000, 89 FERC 61,162 (1999)(Applicants agreed, as a condition of merger approval, to follow FERC's policy regarding treatment of costs and revenues of affiliated non-power transactions).

⁶ Order Approving Merger, Joint Petition of Dominion Resources, Inc., and Consolidated Natural Gas Company For approval of agreement and plan of merger under Chapter 5 of Title 56 of the Code of Virginia, Case No. PUA990020 (September 17, 1999), *amended by* Amending Order, Case No. PUA990020 (September 27, 1999); Order Approving, in Part, and Denying, in Part, Petitioners' Requests, Joint Petition of Virginia Electric and Power Company, et al., Case No. PUA990068 (December 29, 1999), *amended by* Order Granting Relief, Case No. PUA990068 (March 30, 2000).

20 VAC 5-311-30 A 10. We find it unnecessary to delete or amend this rule.

Accordingly, IT IS THEREFORE ORDERED THAT the Petitions for Reconsideration filed by RGC, WGES, and AEP-VA are hereby DENIED.